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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,226	05/08/2001	Jeffry G. Weers	0073.00	4017
21968	7590	12/20/2004	EXAMINER	
NEKTAR THERAPEUTICS			HUI, SAN MING R	
150 INDUSTRIAL ROAD			ART UNIT	
SAN CARLOS, CA 94070			PAPER NUMBER	

1617

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/851,226

Applicant(s)

WEERS ET AL.

Examiner

San-ming Hui

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 10 November 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

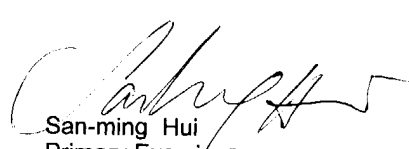
NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, first paragraph.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-15, 17-32, 44-55, 57-62, 64, 65 and 67-78.Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
San-ming Hui  
Primary Examiner  
Art Unit: 1617

### **ADVISORY ACTION**

Applicant's arguments filed November 10, 2004 with regard to the outstanding rejection under 35 USC 112, first have been considered, and found persuasive.

Therefore, the outstanding rejection under 35 USC 112, first is withdrawn.

The double patenting rejection will remain, as the applicants have not provided terminal disclaimer.

Continuation of 5):

Applicant's arguments filed November 10, 2004 averring Weers' failure to teach the herein claimed molar ratio of cation have been considered, but are not found persuasive. Examiner notes that Weers does not teach the herein claimed molar ratio, however, taken with the teachings of the secondary reference, Materne, one of ordinary skill in the art would have been motivated to modify the molar ratio of cation since Materne teaches the herein claimed ratio and such composition is disclosed as highly stable for pharmaceutical application.

Applicant's arguments filed November 10, 2004 averring Materne's failure to teach saturated phospholipids have been considered and have been addressed in the previous office action mailed May 5, 2004.

Applicant's arguments filed November 10, 2004 averring Weers' failure to teach the addition of calcium salt as a stabilizing agents have been considered, but are not found persuasive. Examiner notes that the claims are directed to a composition, not a method of stabilizing phospholipids. Therefore, if there is motivation, even the

Art Unit: 1617

motivation is different from what the inventors envisioned, to incorporate the herein claimed ingredients into the phospholipids composition, the claims will still be properly rejected under 35 USC 103 over the cited prior arts.

Applicant's arguments filed November 10, 2004 averring Weers' failure to provide motivation to adjust the molar ratio have been considered, but are not found persuasive because the motivation to adjust the molar ratio is not provided by Weers, as evidenced from the rejection and response set forth in the previous office action mailed May 5, 2004. The motivation to adjust the molar ratio of the cation is provided by the secondary reference, Materne.


No unanswered arguments are seen to be present herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



San-ming Hui  
Primary Examiner  
Art Unit 1617